

# LAFCO of Napa County

*Local Agency Formation Commission*

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**MEMO                      ATTORNEY-CLIENT PRIVILEGED COMMUNICATION**

1/13/04

**TO:** Dan Schwarz, Napa LAFCO Executive Officer

**FROM:** Jackie Gong, LAFCO Counsel

**RE:** American Canyon Sphere of Influence Update – Justification for a Negative Declaration in lieu of a Mitigated Negative Declaration

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In the course of proposing a mitigated negative declaration for the American Canyon Sphere Update (“SOI Update”), two issues have arisen. The first question is whether the LAFCO Commission has the authority to impose the proposed mitigation measures described in the Initial Study of the SOI Update. The second question is whether a finding of no significant environmental effect is justified for this SOI Update, assuming further analysis shows the Update involves property whose land use will for the most part remain the same, whether in the County or the City of American Canyon.

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Representative of the General Public

Daniel Schwarz  
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### Feasibility of the Proposed Mitigation Measures

As the SOI Update constitutes the first step towards annexation and foreseeable development, the Initial Study considered the effects of other probable future projects (e.g. annexation and zoned development of the properties) as a context for considering the incremental effects of the SOI Update itself and whether these incremental effects, if any, were cumulatively considerable. The Initial Study identified cumulative impacts and proposed mitigation measures requiring that, prior to annexation of any SOI Update properties, the City of American Canyon, as the regulatory agency, demonstrate that it has or will have a plan to implement various mitigation measures.

The question has arisen as to whether these mitigation measures go beyond the powers conferred by law on the LAFCO Commission. Where there is no authority, mitigations are deemed legally infeasible (Public Resources Code Section 21004 and 14 California Code of Regulations Section 15040<sup>1</sup>). Agencies are not required to propose or analyze mitigation measures that cannot be legally imposed (CEQA Guidelines Section 15040). Because CEQA confers no independent grant of authority to impose mitigation measures, LAFCO must exercise its powers under the Cortese-Knox-Hertzberg Act, LAFCO's enabling statute (hereafter "Hertzberg Act").

While LAFCO is empowered to develop policies and to impose conditions for the approval of spheres of influence, annexations and other actions it is charged with acting upon, Government Code Section 56375(a)(3) limits LAFCO from imposing conditions that directly regulate land use density or intensity or property development. A fair argument may be made that the proposed mitigation measures regulate property development, albeit indirectly, and that this is beyond the powers of the LAFCO Commission. Regardless, it would be appropriate to acknowledge in the environmental review documents the anticipated environmental impacts, and to further advise that mitigation measures, such as those suggested in the documents or their equivalent, appropriately should be considered by the City of American Canyon, as the land use regulatory agency, at the time the subject properties of the SOI Updates undergo annexation and future development.

### Justification for a Negative Declaration

County and City comments on the Initial Study assert that the SOI Update is either not a project under CEQA or categorically exempt from CEQA, and therefore, no further environmental review is necessary.

Government Code Section 56425 provides that approval of a sphere of influence update or amendment follows upon first complying with the California Environmental Quality Act (Public Resources Code Section 21000 et seq.; hereafter "CEQA"). A "project" as defined under CEQA is subject to environmental review. CEQA Guidelines (Title 14 of the California Code of Regulations) define a "project" as an activity that may cause a direct or reasonably

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<sup>1</sup> Hereafter Title 14 of the California Code of Regulations will be referred to as CEQA Guidelines.

foreseeable, indirect physical environmental change that is undertaken by a public agency. The threshold issue is whether the proposed SOI Update is a project under CEQA. If it is, then environmental review under CEQA is required.

A sphere of influence update is a planning tool that identifies probable physical boundaries for municipalities and other organizations. While an SOI is not always per se a project (*City of Angoura Hills v. Local Agency Formation Commission*, 198 Cal. App.3d 480 (1988)), a court has also ruled that a revision to SOI guidelines is a project subject to CEQA because it embodied a major policy shift that would affect land use throughout the entire region by removing the previous guideline that urban development belonged in cities (*City of Livermore v. Local Agency Formation Commission*, 183 Cal. App. 3d 681 (1986)).

The *City of Angoura* case is somewhat unclear as to the legal basis for the finding of no significant impact in that the court at one point determines the LAFCO decision on the SOI is not a project at all because it has no potential to cause significant environmental impacts; then in other parts of the decision, the court states it is a project, but is exempt because it could not possibly cause significant impacts. In this case, the SOI decision resulted in defining probable boundaries that were virtually coterminous with the city's existing municipal boundaries, *thus not resulting in any changes in land use*. Had the SOI amendment expanded beyond the city's existing municipal boundaries, such action arguably could have affected land uses in areas within the expanded sphere, and probably would have resulted in a finding that CEQA applied. Similarly, the court in *Simi Valley Recreation and Park District v. Local Agency Formation Commission*, 51 Cal. App. 3d 648 (1975), determined that the detachment of 10,000 undeveloped acres from a parks and recreation district was not a project within the meaning of CEQA, citing the action did not affect the uses to which the land could be put and that no development was planned for the land.

In determining whether a particular agency action is a project under CEQA, courts look to whether the action affects the uses to which the land could be put and whether development is planned for the land. The SOI Update is the first step towards anticipated development of the subject territory of the update. The proposed probable physical boundaries go well beyond the present boundaries of the City of American Canyon. Arguably, this Update could affect land uses within the expanded sphere: for example, development of a school is planned and the Eucalyptus Grove SOI area may be developed beyond the land use presently designated by the County of Napa. Given these facts, this SOI Update is a project within the meaning of CEQA, requiring further environmental review.

Accordingly, an initial study of the potential for significant environmental effects was appropriate for the SOI Update.<sup>2</sup> In addressing whether the proposed SOI Update may have

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<sup>2</sup> The City of American Canyon has suggested that it is appropriate to categorically exempt the SOI Update under either CEQA Guidelines Sections 15319(a) or 15320. Section 15319(a) exempts annexations of existing facilities already developed to the density allowed. This clearly does not apply here. Section 15320 exempts governmental reorganizations that do not change the geographical area in which previously existing powers were exercised (such as a consolidation of districts or the merger of a district entirely within a city into that city). This exemption is remised on the project on its face clearly not affecting land uses without the need for further analysis. The SOI Update here requires further analysis of whether land use is affected as potential land use may vary somewhat if developed in the City, as opposed to the County.

significant impact, LAFCO must consider the extent to which land uses are affected by the proposed boundary changes and examine the current state of development of the proposed SOI Update areas and future foreseeable development. To determine whether land use is affected, review of the consistency and compatibility of the land use designations and zoning under the County and the City of American Canyon is appropriate.<sup>3</sup> Where land uses may differ between the two jurisdictions (City and County), the SOI Update itself may trigger potential significant environmental impact, requiring the examination of potential cumulatively considerable significant impacts when viewed in connection with the effect of past projects, current projects, and probable future projects (such as annexation and future development). (See *Communities for a Better Environment v. California Resources Agency*, 103 Cal. App. 4<sup>th</sup> 98 (2002).) However, where it is determined the project in question would have no significant effect, the cumulative effects of other projects need not be considered (*Newberry Springs Water Association v. County of San Bernardino*, 150 Cal. App. 3d 740 (1984).)

It is appropriate in the case of the SOI Update to conduct an initial study as it is not clear that the Update has, with certainty, no possibility that it may have a significant effect on the environment. To conclude this with certainty would require that the designated land uses of the SOI Update properties were the same, whether under the County or City's jurisdiction. That is not entirely the case with the proposed SOI Update. While it is *anticipated* that development will occur to similar or the same levels under either the County or the City, the City's agricultural designations in Area #2 (Watson Lane) and commercial recreation designation in Area #4 (Eucalyptus Groves) allow for more intense uses than the designations in the County's general plan. In Area #3 (Green Island Road) it is assumed that structures will cover 35% of each lot – a common ratio in the area established by the County and generally applied by the City. However, the City's industrial designation does allow for coverage up to 50%. In light of these potential variances in land use, an initial study should be conducted to examine whether the SOI Update itself will trigger identified cumulative impacts that are anticipated with annexation and future development of the SOI Update properties, or whether such cumulative impacts will occur independent of the SOI Update.

County and City comments question whether the SOI Update itself triggers the identified future impact. Given these comments, it would be appropriate to conduct further analysis of this and to reconsider the extent to which land uses are affected by the Update. If the initial study makes findings that the SOI Update itself does not trigger significant impacts, then it is appropriate for the LAFCO Commission to adopt a negative declaration.

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<sup>3</sup> Reviewing a proposed action for consistency under the general plans of the affected land use authorities is in keeping with LAFCO's responsibilities and general approach in considering annexations and other organizations for approval (see Government Code Section 56668(g)).